IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

(1)- Writ Petition No. 373(S/S)2003
(Leading case)

1. Atul Bhatt S/o Sri Daya Dhar Bhatt,
   R/o village Ghiri Post Office Ghiri,
   District Pauri Garhwal.
2. Lalit Mohan Godiyal S/o Sri Bal Krishan Godiyal,
   R/o village Choya, Post Chopra,
   District Pauri Garhwal. ----- Petitioners.

Vs.

1. State Election Commissioner,
   Panchayat and Local Bodies, Uttarakhand,
   Dehradun,
2. Joint Secretary, State Election Commission,
   Uttarakhand, Dehradun,
3. District Magistrate/District Election Officer,
   Pauri, District Pauri Garhwal. ---- Respondents.

With

(2)- Writ Petition No. 372(S/S)2003

Prakash Chandra Joshi ---- Petitioner.

Vs.

State of Uttarakhand and 3 others., ---- Respondents.

With

(3)- Writ Petition No. 371(S/S)2003

Sanjeev Prakash Singh Rawat and 2 others ---- Petitioners.

Vs.

State of Uttarakhand and 3 others., ---- Respondents.

With

(4)- Writ Petition No. 379(S/S)2003

Ramesh Chandra Singh Bora ---- Petitioner.

Vs.

State of Uttarakhand and 3 others., ---- Respondents.

With

(5)- Writ Petition No. 386(S/S)2003

Sanjay Kumar. ---- Petitioner.

Vs.

State of Uttarakhand and 3 others., ---- Respondents.

With

(6)- Writ Petition No. 356(S/S)2003

Dinesh Chandra Upreti ---- Petitioner.

Vs.

State Election Commission and 3 others., ---- Respondents.

With

(7)- Writ Petition No. 401(S/S)2003

Surenderi Dutt and another ---- Petitioners.

Vs.

State Election Commission and 4 others., ---- Respondents.

With

(8)- Writ Petition No. 403(S/S)2003

Kukum Singh Bhandari and another ---- Petitioners.

Vs.

State Election Commission and 4 others., ---- Respondents.

With

(9)- Writ Petition No. 404(S/S)2003

Hem Chandra Pandey and another ---- Petitioners.

Vs.

State Election Commission and 4 others., ---- Respondents.

With

(10)- Writ Petition No. 405(S/S)2003

Santosh Singh Bora and two others ---- Petitioners.

Vs.

State Election Commission and 4 others., ---- Respondents.

With

(11)- Writ Petition No. 406(S/S)2003

Satyanand Badoni and 4 others ---- Petitioners.

Vs.

State Election Commission and 3 others., ---- Respondents.

With

(12)- Writ Petition No. 407(S/S)2003

Kulwant Singh Gosain and another ---- Petitioners.

Vs.

State Election Commission and 4 others., ---- Respondents.

With

(13)- Writ Petition No. 408(S/S)2003

Smt. Madhubala and another ---- Petitioners.

Vs.

State Election Commission and 4 others., ---- Respondents.

With

(14)- Writ Petition No. 409(S/S)2003

Sachin Kumar Verma and another ---- Petitioners.

Vs.

State Election Commission and 4 others., ---- Respondents.

With

(15)- Writ Petition No. 410(S/S)2003

Bijender Singh Kaintura and 2 ors. ---- Petitioners.

Vs.

State Election Commission and 2 others., ---- Respondents.

With

(16)- Writ Petition No. 411(S/S)2003

Vijay Lal ---- Petitioner.

Vs.

State Election Commission and 4 others., ---- Respondents.

With

(17)- Writ Petition No. 412(S/S)2003

Rajender Prasad Pathak and 2 others ---- Petitioners.

Vs.

State Election Commission and 4 others., ---- Respondents.

With

(18)- Writ Petition No. 435(S/S)2003

Mamta Joshi ---- Petitioner.

Vs.

State of Uttarakhand and 3 others., ---- Respondents.

With

(19)- Writ Petition No. 436(S/S)2003

Mohan Singh ---- Petitioner.

Vs.

State of Uttarakhand and 3 others., ---- Respondents.

Sri Rakesh Thapliyal, Adv., Sri Manoj Tewari, Adv.,
Sri M.C. Kandpal, Sr. Adv., & Sri S.S. Chauhan, Adv. for the petitioners.
Sri Sudhanshu Dhulia, learned Sr. Counsel and
Sri Arvind Vashishtha, learned Asstt. Solicitor General for the respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Rakesh Thapliyal, Adv., Sri Manoj Tewari, Adv., Sri M.C. Kandpal, Sr. Adv., Sri S.S. Chauhan, Adv. for the petitioners and Sri Sudhanshu Dhulia, learned Sr. Counsel & Sri Arvind Vashishtha, learned Asstt. Solicitor General for State Election Commission/ respondents.

The controversy raised by means of these writ petitions is almost same, therefore; all these writ petitions were clubbed forthe sake of convenience and are being disposed of by a common judgment. Writ petition no. 373 (SS) 2003 shall be the leading case.

Vide Circular Letter dated 05.02.1996, issued by the Joint Secretary, Govt. of U.P. addressed to the Deputy Commissioner, State Election Commission Lucknow, 1 post of Assistant District Election Officer, 2 posts of Senior Assistant, 2 posts of Junior Assistant and 2 post of Class IV employees were sanctioned and created in every district of the State, temporarily, till 29th February 1996 for conducting Elections of Panchayat and Local bodies held time to time. The petitioners in all these writ petitions were appointed on the posts of clerks and Class IV employees with the respondents' Department i.e. the State Election Commission, Panchayat & Local Bodies, Uttarakhand, Dehradun.

Since elections of Local Bodies were not completed till the month of May 2003, the Commission passed order to the effect

that the contract period of the employees working with the Commission is being extended upto 30th June 2003. The District Magistrate/District Election Officer, Pauri Garhwal passed order informing the petitioners that the their period of contract has been extended upto 30th June 2003. Similar letters were also issued by the District Magistrate/District Election Officers of the others districts. The petitioner, aggrieved with the action of the District Magistrate/District Election Officer, preferred the present writ petitions and have taken stand that since the posts are still in existence and the petitioners are continuing on their respective posts, therefore the action on the part of respondents to extend the period of contract only upto 30th June 2003 is exclusively arbitrary, as such, is not at all sustainable in the eyes of law.

It has been further submitted by the learned counsel for the petitioners that still there is work of election in the State, thus the petitioners may be permitted to continue on the posts held by them. In this context, this Court has granted stay order in favour of the petitioner on 11th July 2003 in the leading case and similar stay orders were passed in the connected petitions.

It is not disputed by the respondents that the posts, which were created and sanctioned vide Circular no. 05.02.1996 in each districts of the State, though temporarily, the period of posts have been extended upto 28th February 2007, vide order dated 16th April 2006 of Secretary Govt. of Uttarakhand. However, there is no document available with the record, which could show that the Competent Authority has further extended the period of aforesaid posts, after 28th February 2007.

Learned counsel for the petitioners have brought to the notice of the Court the order dated 26th June 2001 passed by the respondents to demonstrate that some persons have been appointed as Assistant Election Officers on regular basis and have been regularized by the Govt., but there is no material on record to establish that the persons appointed in the posts, so sanctioned by the Commission, have been regularized.

Learned counsel for the petitioners have submitted that every year the period of posts is being extended upto to 28th February by the Govt. just prior to one or two months of the current year. It is further submitted by the learned counsel for the petitioners that the services of the petitioners are required by the Commission as illustrates from the order dated 29th December 2005 passed by the Joint Secretary, State Election Commission as by the aforesaid order, the State Election Commission has permitted appointed on the posts which was sanctioned, though temporarily, by means of deputation.

On 14th September 2005, learned counsel for the petitioners have submitted before the Court that the petitioners have already moved representation before the respondents with a prayer that since they are working with the respondents' Department for a long period, they may be regularized on the posts held by them and have requested that the respondents may be directed to take decision on their representation . On the same day this Court directed the respondents to take decision on the representation of the petitioners within a period of three weeks from the date of production of representation. In pursuance of the order passed by this Court on 14th September 2005, the respondents have rejected the representation of the petitioners. Since, the prayer sought by the petitioners through

their representation was for regularization of their services, the respondents have rightly rejected the same in view of the decision of the Apex Court in the case of ***Secretary, State of Karnataka vs. Uma Devi, reported in (2006) 4 Supreme Court Cases, Page-01.*** The petitioners cannot claim for their regularization, even the period of posts, which were created and sanctioned vide order dated 05.02.1996, temporarily, is further extended.

Learned counsel for the petitioners has further submitted that the respondents while rejecting the representation of the petitioners have stated in the rejection order, that as and when the posts are available after following due procedure, the petitioners who are working with the Department shall be given weightage. However, there is no mention in the rejection order that the persons who are working in the Department and have become overage, there will be a provision for age relaxation. In this context, it is expected from the Competent Authority to take into consideration this factual aspect that, in case, in near future the posts are filled in accordance with law, some persons who are working in the Department may have become overage, as such, the respondents may also consider for relaxation of age of such candidates.

Learned counsel for the petitioners apprehended that the respondents may terminate the services of petitioners and may recruit other persons on ad-hoc basis in place of petitioners, but the apprehension is baseless. The apprehension of learned counsel for petitioners that the respondents may provide contractual appointment to other persons after removing the petitioners is also baseless. It is expected that the respondents

shall make regular appointments only after following due procedure prescribed under the law.

In the circumstances aforesaid, I deem it justified to direct the respondents that, in case, the period of posts, which were created and sanctioned temporarily vide order dated 05.02.1996, is further extended by the Authority Concerned and if the posts are still in existence, though temporarily, the period of contract of petitioner's appointment may be extended till then or till regularly selected candidates join on the post held by petitioners. It is expected from the Competent Authority to take into consideration the fact that, in case, in near future the posts are filled in accordance with law, the petitioners may be provided weightage as stated by respondents in the order rejecting representation of petitioners. The respondents may also consider sympathetically the issue of relaxation in age of those who have worked with the Department.

With these observations all these writ petitions are disposed of. No order as to costs.

All miscellaneous applications shall disposed of.

Let a certified copy of this judgment be kept in other connected writ petition.

(M.M. Ghildiyal, J.)

May 2, 2007:
NCM:

Hon'ble M.M. Ghildiyal J

Heard. The Writ Petition is disposed of finally. Detail order passed on separate sheets and placed in W.P. no.373/03(S/S).

02.05.2007